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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,449	09/28/2001	Takua Nakamura	WEN-008	1688
23353	7590	03/29/2005		EXAMINER
RADER FISHMAN & GRAUER PLLC LION BUILDING 1233 20TH STREET N.W., SUITE 501 WASHINGTON, DC 20036				PARAH, AHMED M
			ART UNIT	PAPER NUMBER
				3739

DATE MAILED: 03/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/964,449	NAKAMURA ET AL.	
	Examiner	Art Unit	
	Ahmed M Farah	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 27 December 2004.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 2,3,6-9 and 14 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 2,3,6-9 and 14 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 2, 3, 8 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Amano et al. 6,190,374 B1.

Amano et al. disclose a corneal surgery apparatus for correcting refractive error of the eye by ablating corneal tissue with a laser beam, the apparatus comprising:

an input means 21 for inputting the data related to the refractive power of the patient's eye or the like (input means 21 is capable for inputting an identifier assigned to a contact lens);

a control means 20 (calculation unit) for receiving ocular data, calculating correction patterns from the received data, generating correction signals, and storing different kinds of correction patterns (see col. 4, lines 61-67);

an ablation system comprising a laser light source 1 for emitting ablative laser beams, and an irradiation optical system (2-9, 14, and 16) for irradiating the laser beams to the cornea; and

determining means (see claim 1) for determining the corneal shape based on the information inputted by said input means, and for obtaining ablation amount of a part of the cornea (calculating means for converting the inputted refractive power data to obtain ablation data as presently claimed).

The control means 20 further controls the ablation amount of the corneal tissue based on the obtained ablation data.

As to claim 9, their irradiation optical system includes: a circular aperture 7 of which opening diameter is changeable; a projection lens 14, which projects the aperture onto the cornea; a shifting unit 8, which displaces a region to be irradiated with the laser beam from a center of an optical zone on the cornea; and a rotator 6, which rotates the laser beam. See Fig. 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 6, 7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amano et al. in view commonly known ophthalmic procedures for determining visual defects of the eye.

In reference to the recitation in claim 6 that 'different lenses are used to determine visual defects related to far vision and near vision,' although Amano et al.

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determine the desired corneal correction prior to irradiation, they do teach the use of contact lenses to determine the desired visual defects of the eye. However, it is common and well known in the ophthalmological arts to use different lenses during ophthalmic examination to determine the visual defects of the eye in order to write prescription for correcting the defects of the eye. The desired prescription can be selected from any of the known refractive corrections, such as contact lenses, eyeglasses, or refractive surgery. Optical testing and subsequent correction using the results of said testing is the express purpose of ophthalmology in general.

Therefore, it would have been obvious to one skilled in the art at the time of the applicant's invention to modify Amano et al. in view of the commonly known examinations for determining visual defects of an eye and use contact lenses in order to determine the desired vision correction prior to ablation. The use of lenses or contact lenses to correct vision disorders are well known in the art. Thus, since corrective surgery using a laser beam is an irreversible process, the use of contact and/or non-contact lenses to determine the desired correction prior to ablation would provide to the surgeon with a safe and reliable data.

Shimmick et al. U.S. Patent No 6,592,571, teach apparatus and methods of use for measuring corneal irregularities and for correcting visual defects of the eye based on the measured data. in particular, their invention is for use in laser eye surgery. They further teach that the laser refractive surgery is an alternative vision correction method that replaces eyeglasses and contact lenses (see col. 7, lines 7-17).

Williams et al. U.S. Patent No. 5,777,719, teach a computer-controlled

apparatus and methods of use for determining refractive disorders of an eye by measuring wavefront aberrations of the eye. They teach that the measured data may be used for fabricating contact lenses, intraocular lens, or to guide a surgical procedure to correct refractive disorders of the eye (see the abstract).

Payman, U.S. Patent No. 6,436,092, teaches that the optical methods, which involve the placement of lenses in front of the eye, for example, in the form of glasses or contact lenses, to correct vision disorders are well known in ophthalmological arts (see col. 1, lines 54-56).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,173,723 to Volk discloses methods for fabrication contact and/or intraocular lenses based on measured aberrations of the eye (see col. 6, line 52 through col. 7, line 5; and col. 15, lines 13-29).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon-Thur. 9:30 AM-7:30 PM, and 9:30 AM - 6:30 PM on every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M DVorak can be reached on (571) 272-4768. The fax phone

number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ahmed M Farah
Primary Examiner
Art Unit 3739

March 21, 2005.

